and policies."[93] The decision to extend this same evaluation and analysis to non-broadcast licensees recognized that all FCC licensees are expected not only to meet the hare minimum of compliance with all of the Commission's rules, but also that licensees are expected to conduct themselves in such a way as not to violate any criminal statutes or other government agency rules. The Commission thus evaluates this full range of conduct when determining an entity's fitness to become or remain a Commission licensee.

1. **The** Character Qualification Criteria Are **Well** Established and Plainly Understood by **All** Commission Licensees

The Commission consistently focuses on three classes of non-FCC misconduct when evaluating the qualifications of licensees such as WorldCom, determining whether there exists:

(1) adjudicated fraudulent statements to another governmental unit;

(2) criminal convictions involving false statements or dishonesty; and

(3) adjudicated violations of anticompetitive or antitrust laws in connection with station-related misconduct.[94]

The Commission regularly examines these classes of conduct when considering applications for assignment of authorizations from one entity to another. The Commission also takes these classes into account when determining whether the totality of circumstances raises questions about the licensee's character to the level necessary to prohibit the company from continuing as a Commission licensee.[95] WorldCom's actions serve as prime examples of the type of conduct contemplated by the first two classes.

[93] ***Character Policy Statement*** at para. *7*.

[94] ***See Character Policy Statement*** at para. 10; ***Further Policy Statement*** at para 3

[95] The Commission's willingness to use the ***Character Policy Statement*** to evaluate the character qualifications of a non-broadcast entity is well-established. ***See, e.g.***, ***Twiggs County Cellular Partnership Macon- Warner Robins,*** 14 FCC Rcd 9663, para. 10 (1999)(*"Twiggs"*)(*citing* ***A.S.D. Answer Service, Inc.***, 1 FCC Rcd. 753 (1986)).

a. WorldCom's Fraudulent Filings with the SEC Preclude It from Meeting the Commission's Character Requirements

It is indisputable that WorldCom made "fraudulent statements to another governmental unit" by filing admittedly false 10-K statements with the SEC.[96] By such actions, WorldCom engaged in conduct that falls squarely within the first of the three classes of misconduct the Commission cited as central to disqualifying an entity from being a licensee. Plainly, WorldCom's misrepresentations to the SEC and the company's numerous violations of securities law disqualifies WorldCom from holding any FCC authorizations or certifications.

b. Guilty Pleas by WorldCom Officers Equal Criminal Convictions Involving False Statements and Dishonesty

The actions **of** WorldCom's officers also fall within the second class of conduct proscribed by the *Character Policy Statement* – "criminal convictions involving false statements or dishonesty."[97] **As** of the date of this filing, a number of WorldCom's officers have been indicted on, and pled guilty to, felony charges of conspiracy to commit securities fraud and making false statements to the SEC in the course of their employment.[98]

On September 26,2002, David F. Myers, the Senior Vice President and Controller of WorldCom during the pertinent time period, pled guilty to conspiracy to commit securities fraud, securities fraud, and false filings with the SEC.[99] The Honorable Richard Conway Casey of the U.S. District Court, Southern District of New York, accepted the guilty plea and directed the

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[96] *Character Policy Statement* at para. 10.

[97] *Character Policy Statement* at para. **10.**

[98] *Sullivan and Yates Indictment.*

[99] ***See*** *supra* note 16.

preparation of a pre-sentencing report.'[100] Sentencing has been scheduled for December 26, 2002.[101]

On October 7,2002, another senior executive of WorldCom, Buford Yates, Jr. who is the Director of General Accounting, pled guilty to securities fraud and conspiracy before **U.S.** Magistrate Judge Andrew J. Peck, **U.S.** District Court, Southern District of New York.[102] **The** Honorable Andrew J. Peck said he would recommend that U.S. District Judge Barbara **S.** Jones accept the plea and sentencing was set for January **9,** 2003.[103]

Another key manager in Yates' general accounting office, Betty Vinson, also pled guilty to charges of conspiracy to commit securities fraud and securities fraud on October 10, 2002.[104]

The Commission generally restricts its inquiry into non-FCC misconduct to "adjudicated" misconduct. Guilty pleas should be treated as the functional equivalent of an adjudication. In this case, the Senior Vice President and Controller of WorldCom has pled guilty to conspiracy to commit securities fraud, securities fraud, and false filings with the SEC.[105] **The** Director of General Accounting of WorldCom, Buford Yates, Jr., and the Director **of** Management Reporting, Betty Vinson, have pled guilty to conspiracy to commit securities fraud and securities fraud.[106] Thus, federal criminal cases against officers of WorldCom have been adjudicated.

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[100] ***Id.***

[101] ***Id.***

[102] *See supra* note 17.

[103] ***Id.***

[104] ***See Ex WorldComExecs Plead*** *Guilty*, October 11,2002, available at http://www.msnbc.codnews/8 19708.asp (last visited October 11,2002)

[105] *See supra* note 99.

[106] ***See*** *supra* note 17.

In addition to the conduct described in the pleas, much of WorldCom's behavior comes perilously close to falling within this second class of proscribed conduct, and it may only be a matter of time before there are further pleas and convictions. The SEC already determined that WorldCom engaged in "accounting improprieties of unprecedented magnitude"[107] and, based on that determination, the SEC sought injunctive relief and civil monetary penalties in the U.S. District Court. The SEC's decision to pursue a civil complaint against WorldCom and its officers in Federal court represents a functional adjudication by the SEC that WorldCom and its officers knowingly provided false information to the SEC and engaged in securities fraud.[108] Indeed, the complaint, filed on behalf of the SEC by its General Counsel, bluntly states that WorldCom "disguised its true operating performance" and "falsely portrayed itself as a profitable business during 2001 and the first quarter of 2002" in violation of numerous provisions of law and SEC regulation.[109] Such allegations are not made lightly, and – when considered in connection with the existing pleas – should serve to clearly establish the fact that WorldCom engaged in behavior that is clearly contrary to Commission rules and policies.

2. WorldCom's Conduct Resulted Not From Incompetence, But From Calculated Fraud and Deception

It is clear that none of the Commission's mitigating factors apply in this case. The Commission found that factors such as "the willfulness of the misconduct, the frequency of the misconduct, the currentness of the misconduct, the seriousness of the misconduct, that nature of the participation **(if** any) of managers or owners, efforts made to remedy the wrong, overall

[107] *SEC June 26 Statement.*

[108] At the very least, the outcome of any adjudication of these matters will have an impact on WorldCom's fitness to remain a licensee under the standards articulated in the Commission's *Character Policy Statement,* and the FCC should be prepared to investigate the implications of these adjudications whenever they are finalized.

[109] *SEC Complaint* at 2.

record of compliance with FCC rules and policies, and rehabilitation" should be considered when determining whether an applicant or licensee has the requisite "propensity to obey the law."[110] All such facts here weigh against WorldCom.

Here, it is clear that the misconduct occurred with the participation of – and indeed at the direction of – officers and managers at the highest levels of the company, indicating a culture of deception and fraud with well established roots in WorldCom's executive offices. During his allocution to the U.S. District Court, the Senior Vice President and Controller of WorldCom during the relevant time period, David F. Myers, stated under oath that:

> ". . . I was instructed on a quarterly basis by senior management **to** ensure that entries were made to falsify WorldCom's books to reduce WorldCom's reported actual costs and therefore to increase WorldCom's reported earnings. Along with others, who worked under my supervision and at the direction of WorldCom senior management, such accounting adjustments were made for which I knew that there was no justification or documentation and which I knew were not in accordance with Generally Accepted Accounting Principles."'[11]

Similarly, during his plea to U S . Magistrate Judge Peck, WorldCom's Director of General Accounting admitted that he "was directed by [his] supervisors to make adjustments to WorldCom's reported financial statements" that "contravened generally accepted accounting principles."[112] His attorney, David Schertler, stated that Mr. Yates, Director of General Accounting, "strenuously objected to making those adjustments," but when Mr. Yates objected, "he was told they had been approved by the highest levels of WorldCom management."[113]

110 *Further* ***Policy Statement*** at para. **4.**

111 ***See*** *supra* note 16.

112 ***See*** *supra* note 16

113 ***See*** Ben White, *Yates Is Cooperating with Federal Probe*, The Washington Post, Oct. 7, 2002 at E1.

Although the entire scope of the fraud committed by WorldCom remains to be fully uncovered, WorldCom's President and CEO has repeatedly admitted WorldCom's "misdeeds"[114] in "misstat[ing] [its] earnings for the last five quarters . . . ."[115] This is not mere incompetence. The scope of the misrepresentation when combined with WorldCom's disingenuous public *mea culpa*[116] produce a picture of a company where compliance with the law is not held to the high standard expected in a Commission licensee.[117] At base, WorldCom's behavior exhibits an inherent disrespect for the confines of the law and the Commission's rules, and the Commission must respond accordingly.[118]

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[114] *Sidgmore July 8 Statement.*

[115] WorldCom Press Conference Statement, July 2,2002, *available at* http://www1.worldcom.com/infodesk/restatement/july2press/ (last visited Sept. 16,2002). This statement is appended as Attachment I ("*WorldCom Press Conference Statement").*

[116] ***See*** *supra* note 25.

[117] ***See*** *supra* text accompanying note 25 *(Sidgmore Editorial);* Matt Krantz, *WorldCom's insiders didn't dump their stock,* USA Today, Mar. 20,2002, *at* http://www.usatoday.com/money/telecom/2002-03-21-worldcom-insiders.htm; Denise Pappalardo, *WorldCom troubles worsen*, Network World Fusion, Nov. 8, 2000, *available at* http://nwfusion.com/news/2000/1108wcsuit.html (last visited Sept. 12 2002).

[118] Even if the Commission were not able to find that WorldCom (under either its current or former directors) lacks the character to be a licensee, the FCC should still find WorldCom unqualified *to* continue as a Commission licensee because WorldCom's principals have failed, are failing, and are likely to continue to fail to exercise sufficient control over the company's operations to ensure that WorldCom will abide by FCC regulations. ***See*** *Duchossois Communications Co. of Maryland, Inc.*, Memorandum Opinion & Order, 10 FCC Rcd 6688 (1995) (noting that Commission "has, for example, designated issues for 'willful and repeated' violations of Commission legal and technical requirements, ***see*** *Lewel Broadcasting, Inc.* [86 F.C.C.2d 896 (1981) *and Fred Kaysbier* [34 F.C.C.2d 788 (1970)], where the licensee's station operation 'was conducted in an exceedingly careless, inept and negligent manner and [where] the licensee is either incapable of correcting or unwilling to correct the operating deficiencies"'; *cf. Trustees of the University of Pennsylvania,* 69 F.C.C.2d 1394 (1978), *recon. denied,* 71 F.C.C.2d 416 (1979) (denying renewal where licensee delegated program control). There is sound precedent for expecting telecommunications firms to exercise sufficient control to satisfy Commission requirements, and for designating hearing issues when they are incapable of doing so. ***See*** *Arizona Mobile* ***Tel.*** *Co.*, 66 F.C.C.2d 691, 707 (1977) *("Arizona Mobile")* (designating issue going to "whether the management and operations of other licensees and companies owned or controlled by Robert L. Starer has been so irresponsible, careless or inept that the applicants cannot be relied upon to fulfill the responsibilities imposed upon them as licensees of this Commission."

C. WorldCom's Admitted Conduct Not Only Supports – but Demands – Action by the Commission

WorldCom has publicly admitted its fraudulent actions in substantial part. In this respect, the facts are undisputed, and waiting for formal adjudication is unnecessary. In any event, as the Commission held in *Character Policy Statement,* where the conduct hearing on character is "so egregious as to shock the conscience and evoke almost universal disapprobation," the FCC may consider the effect of the conduct before the matter is adjudicated."' The notorious conduct at issue in this case – what has been called the "largest instance of corporate fraud in the history of U.S. commerce"[120] – surely meets this standard. The charges against WorldCom are more than mere allegations. The flood of information now deluging the public and investigators now demonstrates that WorldCom does not possess the requisite propensity to obey the law. The statements **of** the Chairman of the SEC, the Chairman of the FCC, and the President of the United States have certainly indicated shock and disapprobation.[121]

D. Expanded Control of the Information Infrastructure Demands Higher Standards of Accountability

Through its subsidiaries, WorldCom is the custodian of a critical portion of the Internet backbone and infrastructure and the provider of Internet services to a large portion of the American **public.**[122] Thus, it is even more imperative that the Commission evaluate WorldCom's

[119] *Character Policy Statement* at para 48, note 60.

[120] Christopher Stem & Kathleen Day, *US. Ready to Charge WorldCom Ex-Officers; Ebbers May **Be** Among Target, Source Says,* The Washington Post, July 26,2002, at El ("*Ebbers May **Be** Among Target*").

[121] *See supra* notes 15 - 22.

[122] ***See,*** *e.g., Internet Problems Tied to WorldCom's UUNet Unit,* The Washington Post, October 3,2002 ("WorldCom's UUNet unit, . . . carries roughly half of U.S. Internet traffic . . . ."), *available at* **http:/lwww.washingtonpost.comJwp-dyn/articles/A38808-20020ct3.html.**

character to determine whether WorldCom is fit to be entrusted with significant control over the American public's essential personal communication and information gathering resources.

Since Internet services have been **or** will soon he classified as information services,[123] it is clear that Internet service providers have the ability to control content much like broadcasters. As Title III licensees, broadcasters have been historically subject to strict character qualifications in order to preserve the public's First Amendment rights and to promote diversity of content. In order to protect the American public's access to personal communication and information gathering resources, the Commission must apply strict character qualifications to custodians of the Internet infrastructure and to providers of Internet services such **as** WorldCom to ensure that such owners and providers possess the requisite good character qualifications.

E. Transfer of FCC Authorizations from WorldCom to WorldCom as Debtor-In-Possession is Insufficient to Ensure Fitness to Remain a Holder of FCC Authorizations

The transfer of FCC authorizations from WorldCom to WorldCom-DIP does not result in the transfer of the authorizations to **an** entity which complies with the FCC's character qualification requirements. Rather, the proposed transfer is but a mere formality – a shuffling of papers – that involves no real change of control or responsibility. Therefore, any failures of responsibility or rule violations by WorldCom must also be attributed to WorldCom-DIP.

WorldCom filed its Chapter 11 petition under the provisions **of** 11 U.S.C. §§ 101, et. seq. (the "Bankruptcy Code") and, pursuant to Sections **1107** and 1108 of the Bankruptcy Code, WorldCom continues to operate its business and manage its FCC authorizations and assets as a Debtor-In-Possession. The filing of the Chapter 11 petition did not create a new entity different

[123] *See In the Matter of Inquiry Concerning High-speed Access to the Internet Over Cable and Other Facilities;* GN Docket No. 00-185, (March 15,2002); *FCC Initiates Proceeding To Examine Regulatory Treatment Of Incumbent Carriers' Broadband Services*, FCC News Release, December 12,2001.

from the pre-bankruptcy WorldCom.[124] If no trustee is appointed in the case, WorldCom will continue to operate its business as a Debtor-In-Possession until the case is converted or dismissed or a reorganization plan is confirmed. **As** a result, the filing of the Chapter 11 petition did not result in any change in management or control of WorldCom and its operations and, unless the bankruptcy court appoints **a** trustee for WorldCom, an act which it has not taken to date, WorldCom will continue in control of its business operations and conduct of its affairs before the FCC. While OC-UCC acknowledges that the Bankruptcy Court appointed Richard C. Breeden to monitor WorldCom's business activities, it is not Mr. Breeden's duty, nor is he empowered, to ensure WorldCom's compliance with Commission regulations or to protect the public interest. Given the importance of the public interest obligations of Commission licensees, the Commission should take no comfort in the stop-gap measure that **Mr.** Breeden's appointment represents.[125]

The FCC cannot look to the creditors of WorldCom for comfort in knowing that WorldCom's conduct will be subject to any new controls or outside pressure to improve its practices. Just last month, the Committee **of** Unsecured Creditors of WorldCom, Inc. reaffirmed its faith in the same senior management and board that brought WorldCom to this state, noting that it had been "working harmoniously and amicably" with CEO John Sidgmore and other top WorldCom officers.[126]

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[124] *See **NLRB v. Bildisco & Bildisco,*** 465 U.S. 513, 527-28 (1983)

[125] ***See, e.g.***, Seth Schiesl, ***WorldCom Board Won't Oust Member,*** October 10,2002, available at http://www.nytimes.com/2002/10/09/business/09TELE.html?1034740800&en=18e2ff0743e77467&ei=5062 (last visited October 11,2002) (explaining that Breeden did not have the ability to remove a board member whose conduct has generally been accepted as contrary to the interests of the company)

[126] ***See WorldCom's Unsecured Committee Reaffirms Cooperative Relationship with WorldCom Senior Management,*** September 20,2002 at http://www1.worldcom.com/global/news/news2.xml?newsid=4570&mode=long&lang=en&width=530&root=/global/&langlinks=off (last visited October 6,2002).

As a matter of general policy, the Commission will not approve an assignment or transfer application where a licensee's qualifications to continue holding the license are at issue.[127] If, after hearing, a licensee is found not qualified, there will be no license to assign. The Commission did establish an exception to this general policy in ***Second Thursday***.[128] In that case, a licensee in hearing on qualifications issues was forced into bankruptcy, and the bankruptcy trustee sought to assign the license to a new party. The Commission determined that the license could be assigned without a hearing where the individuals charged with the misconduct: (1) would have no part in the proposed operations, and (2) would derive no benefit from the grant of the application or would receive only a minor benefit which would be outweighed by equitable considerations in favor of innocent creditors.[129]

In ***Second Thursday,*** the Commission refused to grant the licenses without a hearing because the wrongdoers in control of the licensee "might be benefited substantially [by the assignment of licenses] . . . and such a benefit would be inconsistent with the public interest."[130] However, once the principals waived their claims to the benefits of the corporation, the Commission found that the public interest was served by the assignment of the licenses, because the transfer "eliminat[ed] . . . any significant benefits to the alleged wrongdoers . . . ."[131]

In accordance with Commission precedent, WorldCom cannot assign its licenses to WorldCom Debtor-in-Possession without a hearing as to its character qualifications. The assignment to this shell entity would benefit those wrongdoers that remain in power at

[127] ***See Jefferson Radio v. FCC***, 340 F.2d 781 (D.C. Cir. 1964)

[128] ***Second Thursday Corp.,*** 22 FCC 2d 515, 516, ***recon. granted,*** 25 FCC 2d 112 **(1970)("*Second Thursday*")**.

[129] *Id* at 516.

[130] *Id* at 520.

[131] 25 F.C.C.2d 112, 113.

WorldCom.[132] Under *Second Thursday,* the Commission may assign the licenses of WorldCom to an entity with clean hands – a trustee who can oversee either the continuing operations or the sale of these assets. OC-UCC believes that the Commission must be a part of the process in order to protect the public interest and suggests the bankruptcy court and Commission work together to identify such a trustee.

Clearly, the only difference between pre-bankruptcy WorldCom and WorldCom-DIP is a meaningless change in words that will do nothing to prevent further harm to the public interest. **As** such, the Commission has an obligation to designate these licenses for hearing. **A** hearing will ensure that the licenses at issue are placed under the control of **an** entity which is qualified to preserve and protect the public interest.

F. WorldCom's Deliberate Misdeeds Have Harmed—And Will Continue To Harm—Consumers, Vendors, Shareholders, Lenders, The Telecommunications Industry, And The American Economy.

WorldCom's fraud and deceit have and continue to cause harm at all levels of the economy. Investors, employees and consumers will pay a high price as the economy struggles to recover from the largest bankruptcy ever. However, even if the extent of the direct harm is ever fully calculated, the economy and individuals may never be able to quantify the indirect harm done by WorldCom's deceit, fraud and mismanagement.

1. WorldCom's Fraud Will Have An Incalculable Negative Effect On The Telecommunications Industry And The U.S. Economy.

The total negative effect of WorldCom's fraud will continue to be felt throughout the telecommunications industry and the U.S. economy for years, if not decades, to come. Indeed, WorldCom's fraud will ''ripple through the telecom sector to the comer store, gashing local

[132] **See** ***supra*** notes 125 and 126

businesses and hampering economic recoveries."[133] According to Senate Majority Leader Tom Daschle, "thousands and thousands of employees are now out of work. Thousands more are facing serious financial harm as a result of the manipulations of [WorldCom's] books."[134]

While the full range of WorldCom's debt is not yet known, WorldCom has already admitted to at least $41 billion in debt, including billions of dollars owed to banks and other lending institutions, equipment vendors, and hundreds of rural and competitive local exchange carriers.[135] Much, if not all, of that debt is likely to be discharged by the bankruptcy court. Moreover, "[t]housands of creditors will be lucky to get pennies on the dollar from WorldCom . . . ."[136] As a direct result, consumers, vendors and other communications carriers will be left holding the bag for WorldCom's misdeeds.

WorldCom's unpaid debts to lending institutions represent billions of dollars that will be unavailable to the telecommunications industry, adversely affecting businesses that are already "in need of financing to support their capital-intensive enterprises . . . ."[137] WorldCom has business relationships with "[m]ost of the USA's 1,200 small phone companies . . . [which account] for 5% to 10% of [the 1,200 small phone companies'] revenue."[138] Further, after the

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133 Jon Swartz, *WorldCom Woes Ripple Throughout Economies,* USA Today, Aug. 9,2002 at 1B ("*WorldCom Woes Ripple Throughout Economies").*

134 *Angry Bush promises WorldCom Probe,* Reuters, June 26,2002 *available at* wysiwyg://77/http://msn.com.com/2 100-1105-939702.html.

135 *See* WorldCom, Inc. Voluntary Chapter 11 Petition, filed July 1, 2002; Proffer of Testimony of Susan Mayer in Support of Adequate Assurance Motion at 6, Case No. 02-13533 (AJG)(S.D.N.Y.).

136 *WorldCom Woes Ripple Throughout Economies.*

137 *Financial Turmoil in the Telecommunications Marketplace: Maintaining the Operations of Essential Communications,* Hearings Before the S. Comm. on Commerce, Science and Transp., 107TH Cong. (2002) (written statement of Michael K. Powell, Chairman, FCC), *available at* http://hraunfoss.fcc.gov/edocs public/attachmatch/DOC-224797A1.pdf (last visited Sept. 6. 2002)("*Powell July 30 Statement").*

13R *WorldCom Woes Ripple Throughout Economies* banks, "WorldCom's biggest creditors tend to be regional telephone companies . . . ."[139] Additionally, "[h]undreds, if not thousands of [telecommunications suppliers] are 'going to take it on the chin"' as a result of WorldCom's fraud.[140]

The imposition of this unrecoverable debt on WorldCom's innocent creditors will act as a financial albatross around the neck of an already depressed market segment. Some companies may themselves be forced to seek bankruptcy protection as a result, leading to a "ripple effect" that will be felt across the entire industry.[141] WorldCom's accounting fraud resulted in "a lingering stench that has poisoned our industry," according to Sprint Chairman and Chief Executive Officer William Esrey.[142] The pressure to compete in the market, and to match the growth claimed by companies that later turned out to be cooking the books, pushed telecommunications companies into unreasonable expansion, foolish investments, and unsustainably low pricing, Mr. Esrey said.[143] He expects the effects of those business decisions to continue haunting the telecommunications industry for many years. "We kept asking ourselves what we were doing wrong because we couldn't generate the numbers WorldCom reported . . . . As we discovered, the margins were a hoax but the devastating effect on our industry was very,

[139] *Id.*

[140] *Id.*

[141] "Certainly if WorldCom knocks down other telecoms, the impact on the overall economy multiplies. More investors will lose their shirts. Banks with close ties to the telecom industry will continue to suffer." Kevin Maney & Andrew Backover, *WorldCom's Bomb,* USA Today, July 22, 2002, at B1. Even without the threat of harmful effects of WorldCom's fraud on innocent and law-abiding carriers, capital expenditures in the telecom equipment industry have declined from $1 13 billion in 2000, to $93 billion in 2001, to an estimated $51 billion in 2002. James P. Parmelee *et al., Telecom Equipment – Wireline Update,* Credit Suisse First Boston, June 26, 2002.

[142] Stacy Cowley, *Sprint CEO blasts WorldCom,* IDG News Service, Oct. 2, 2002 (quoting William Esrey's keynote address at Internet World Fall 2002), *available at* http:www.nwfusion.com/news/2002/1002sprintceo.html (last visited at October 8, 2002).

[143] *Id.*

very real."[144] As competitors disappear, the consumer will suffer from fewer services and less innovation, in direct contravention of the goals of the Telecommunication Act of 1996.

For those companies that survive, capital will become more scarce and expensive, as the balance sheets of these carriers become less attractive. Investors will be less likely to risk their investment in the telecommunications sector. As a result, carriers may not have the necessary reserves to develop and deploy important broadband and other data platforms, to effectively upgrade existing networks, or to add new or maintain existing jobs in the telecommunications field.

WorldCom's misdeeds will also deliver a devastating blow to the well-recognized and critical "capital shortage facing the telecommunications industry"[145]—an industry that Chairman Powell has already characterized as "riding on very stormy seas."[146] Chairman Powell has also noted that telecommunications is an industry "where nearly 500,000 people in the United States alone have lost their jobs and approximately $2 trillion of market value has been lost in the last two years."[147] In sum, the telecommunications industry faces "deepening trouble following . . . WorldCom's [fraud],"[148] which will have a substantially negative effect on the growth of traditional communications services and, particularly, on the deployment of new services.

The ramifications resulting from WorldCom's fraud are particularly troublesome because new investment in broadband is critically important to the national economy. A stagnation in new investment will certainly hurt the telecommunications industry, but it will also cause wider

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[144] *Id.*

[145] *Powell July 30 Statement*, at 11.

[146] *Id.* at 6.

[147] *Id.*

[148] Steve Alexander, *WorldCom Bankruptcy Portends Changes In Telecom Arena*, Star Tribune, July 29,2002.

negative impacts on the American economy generally. As President Bush has stated, "[i]n order to make sure the economy grows, we must bring the promise of broadband technology to millions of Americans."[149]

The failure of the American telecommunications industry to grow will have dire consequences for the nation's telecommunications infrastructure and consequently our national defense and emergency preparedness as well as everyday educational and communications needs.

2. Consumers of Telecommunications Services May Well Pay Higher Prices As A Direct Result of WorldCom's Deliberate Fraud.

Consumer rates for a wide variety of telecommunications services could directly increase as a result of WorldCom's misconduct. As one of WorldCom's largest group of creditors, regional telephone companies will struggle to recover from the debt discharged by the Bankruptcy Court. As smaller camers, such as rate of return and price cap local exchange carriers, struggle to survive in the wake of the WorldCom scandal, these carriers may look to recover WorldCom's defaulted debts through an increase in their federal rates, which will pass at least some of the cost of the WorldCom bankruptcy through to consumers.

For rate of return carriers, WorldCom's fraud could lead to increased rates for consumers of those carriers that use 2002 as a "test period" to set rates. Price cap carriers are somewhat more constrained when it comes to recovering debts such as those owed by WorldCom, but there are mechanisms in the price cap system that allow price cap carriers to recover certain costs in

[149] ***Remarks by the President at the Economic Forum Plenary Session,*** Aug. 13, 2002, ***available at*** http://www.whitehouse.gov/news/releases/2002/08/20020813-5.html (last visited Sept. 16, 2002)("My administration is promoting investment in broadband. We will continue to work to prevent new access taxes on broadband technology. If **you** want something **to** be used more, you don't tax it. And broadband technology is going to be incredibly important for us to stay on the cutting edge of innovation here in America.").

the form of higher rates. If WorldCom's discharged debts are factored into a "low-end adjustment"[150] or are afforded exogenous treatment, customer rates may increase.[151]

WorldCom's fraud has had the proximate effect of flouting the Commission's entire regulatory structure, thereby defrauding the industry—and ultimately consumers—of vast sums of money and potential investment. These effects are the result not of an accounting mistake or error in judgment, but of WorldCom's intentional deception

VI. THE COMMISSION MUST DENY THE ASSIGNMENT APPLICATIONS AND DESIGNATE THEM FOR HEARING ON WORLDCOM'S CHARACTER QUALIFICATIONS

The Commission must deny the pending assignment applications and designate them for hearing. Unanswered, WorldCom's actions make a mockery of the Communications Act and its statutory mandate to the Commission to protect the public interest. The Commission must take affirmative action to force WorldCom to answer for its behavior. Given the clear and convincing evidence presented here, the Commission has ample factual grounds on which to base a decision to designate them for hearing.

Similarly, the Commission has broad legal authority to issue such an order. Section 4(i) of the Act grants the Commission wide-ranging authority to enforce its rules and regulations, providing that it "may perform any and all acts [to] issue such orders, not inconsistent with this

[150] If a price cap carrier's return during the previous year falls below 10.25%, the carrier may adjust the price cap index to retarget its earnings in the current period to 10.25%. Thus, if a carrier has sufficiently low earnings so that WorldCom's discharged debts trigger this "low end adjustment," or if a carrier would be entitled to file for a "low end adjustment" on other grounds, the price cap carrier would be allowed to increase rates because of the would-be losses to achieve a 10.25% return.

[151] Under section 61.45(d) of the Commission's rules, a price cap carrier may obtain an exogenous cost adjustment for a category of costs not already provided for in the exogenous cost rule. Bankruptcy related discharges are not among the categories specified in section 61.45(d) of the Commission's rules.

Act as may be necessary in the execution of its functions."[152] The Commission must use its authority to demand that WorldCom demonstrate its fitness to be a Commission licensee, because deception of this magnitude cannot go unpunished. Clearly, the Commission has all legal authority necessary to carry out its statutory mandate to protect the public interest from WorldCom's misconduct. Accordingly, the Commission must designate these applications for hearing and work to ensure that they are placed in the control of a more qualified entity.

VII. CONCLUSION

Given the evidence of WorldCom's wrongdoing, the Act, well-settled Commission policies, and the public interest mandate that the Commission deny consent to WorldCom's Assignment Applications because WorldCom is unfit to remain a FCC licensee, and because the transfer of WorldCom's FCC Authorizations from WorldCom to WorldCom-DIP will not result in the transfer of the FCC Authorizations to an entity which has the sufficient character qualifications to be a Commission licensee. WorldCom's admitted fraudulent activities, criminal indictments, and guilty pleas clearly demonstrate that WorldCom lacks sufficient character to remain a FCC licensee and, to permit WorldCom to continue to be a FCC licensee is *per se* inconsistent with the public interest, convenience and necessity.

Thus, using its established authority and processes, the Commission must exercise its duty to examine whether the public interest is served by permitting WorldCom to continue to hold these FCC Authorizations. In doing so, the Commission should designate WorldCom's Assignment Applications for a hearing to confirm that WorldCom is unfit to be a Commission licensee. Upon confirming that the facts of WorldCom's wrongdoing are indeed as stated above, the Commission must ensure that WorldCom's FCC Authorizations are only assigned to an

[152] 47 C.F.R § 4(i).

assignee with sufficient character qualifications. In order to secure the continuation of services to the public, the Commission should work with the Bankruptcy Court to appoint a trustee to hold WorldCom's FCC Authorizations and operate the company until a proposed assignee or assignees with sufficient character acceptable to the Commission can be found.

The Commission has a mandate and a duty not to ignore WorldCom's pervasive and repeated wrongdoing – wrongdoing carried out by senior executives of the company some of whom will continue to lead WorldCom during its Chapter 11 bankruptcy and post-bankruptcy.[153] The Act and the Commission's own rules and precedent require the Commission to act expeditiously to protect the public. In order to further ensure that the public interest is protected, OC-UCC is filing on this same day a Petition for Rulemaking requesting the Commission to clarify specific conduct standards for telecommunications providers. OC-UCC proposes that the Commission do this through a review of the character conduct of various Commission regulates, including WorldCom, pursuant to the Commission's authority under Section **403** of the Act. Moreover, OC-UCC intends to monitor the activities of WorldCom and to file appropriate pleadings, in accordance with Commission rules and other laws, with the Commission upon WorldCom's filing of requests for authorization with the Commission.

[153] The Committee of Unsecured Creditors of WorldCom, Inc. reaffirmed its faith in the same senior management and board who led WorldCom into bankruptcy and subject to administrative and criminal proceedings, noting that it had been "working harmoniously and amicably" with CEO John Sidgmore and other top WorldCom officers. ***See supra*** note **126.**

Accordingly, for the reasons set forth above and in accordance with the Act and well-established Commission rules and procedures, OC-UCC respectfully requests that the Commission: (1) deny the applications filed by WorldCom seeking Commission consent to assign all of the FCC authorizations issued to, or held by, WorldCom from WorldCom to WorldCom-DIP; (2) designate WorldCom's Assignment Applications for hearing to determine that WorldCom is unfit to be a Commission licensee; and (3) work with the Bankruptcy Court to appoint a trustee to hold and operate the FCC Authorizations until an acceptable proposed assignee can be found in order to ensure that WorldCom's FCC Authorizations are only assigned to an assignee with clean hands and with sufficient character qualifications.

Respectfully submitted,

OFFICE OF COMMUNICATION OF THE UNITED CHURCH OF CHRIST

October 15,2002

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